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No. 94-2070

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1995

JOHN A. LANGDALE,
Petitioner,
vs.
HUNTERDON COUNTY and COMMUNITY CARE ASSOCIATION OF HUNTERDON,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT

Respondent's Brief in Opposition

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QUESTION PRESENTED

1. Should certiorari be granted for the review of a State Court decision where all issues have been resolved on adequate and independent state grounds and Petitioner has failed to present a valid Constitutional question.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Supreme Court Case Selection Act provides:

> **State Courts; certiorari** [a] final judgements or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States. 28 U.S.C.A. § 1257(a) (West 1993).

New Jersey Workers' Compensation Law provides:

> Every claimant for compensation under Article 2 of this chapter (§ 34:15-7 et seq.) shall, unless a settlement is effected or a petition filed under the provisions of 34:15-50 of this Title, file a petition in duplicate with the division in Trenton, within 2 years after the date on which the accident occurred, or in case an agreement for compensation has been made between the employer and the claimant, then within 2 years after the failure of the employer to make payment pursuant to the terms of this agreement; or in case a part of the compensation has been paid by the employer, then within 2 years after the last payment of compensation except that repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition. . . . N.J.S.A. 34:15-51 (West 1988).

The New Jersey Workers' Compensation Law also provides:

> The Division of Workers' Compensation shall have the exclusive original jurisdiction of all claims for workers' compensation benefits under this chapter. N.J.S.A. 34:15-49 (West 1988).

The New Jersey Statute on Limitation of Civil Actions provides:

> Every action at law for trespass to real property, for any tortious injury to real or personal property, for taking, detaining, or converting personal property, for replevin of goods or chattel, for any tortious injury to the rights of another not stated in § 2A:14-2 and § 2A:14-3 of this Title, or for recovery upon

> a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within 6 years next after the cause of any such actions shall have accrued.
>
> . . . .
>
> N.J.S.A. 2A:14-1 (West 1987).

New Jersey Law on Limitation of Civil Actions also provides:

> If any person entitled to any of the actions or proceedings specified in § 2A:14-1 to § 2A:14-8 . . . is or shall be, at the time of any such cause of action or right or title accruing, under the age of 21 years, or insane, such person may commence such action or make such entry, within such times as limited by said sections, after his coming to or being of full age or of sane mind. N.J.S.A. 2A:14-21 (West 1987).

STATEMENT OF THE CASE

On October 4, 1977, Petitioner John Langdale was involved in an automobile accident while engaged in the course of his employment with the Community Care Association of Hunterdon County (the "Association"). Approximately two weeks following the accident, Petitioner began treating with a neurologist for recurring headaches. In November 1977, he resigned from his full-time employment with the Association and began to work part-time as a consultant for the Association. At some

employment and moved to Florida with his wife and son, where he started a small business.

Petitioner returned to New Jersey in January 1979, purportedly suffering from various psychological afflictions. Sometime thereafter, Petitioner allegedly contacted the Association to pursue a Workers' Compensation claim for his psychological problems, which he attributed to his 1977 automobile accident.

For reasons which are not clear, Petitioner ceased pursuing a claim for Workers' Compensation benefits after October 1979. He resumed his efforts to file such a claim in August 1981, at which point the claim was time-barred by the statute of limitations.

Petitioner alleged in his Complaint that he failed to pursue his claim in a timely fashion because of fraudulent misrepresentations made by representatives of the Association. However, Edmund R. Bernhard, Judge of the Superior Court of New Jersey, Law Division, dismissed Petitioner's fraud claim summarily on the ground that it was time-barred and Petitioner failed to establish a prima facie case for fraud because Petitioner, by his own admission, did not rely on the alleged misrepresentation. (RA5).

More specifically, Judge Bernhard ordered that Petitioner's action be dismissed with prejudice because his claim for Workers' Compensation benefits was time-barred under N.J.S.A. 34:15-51 and pursuant to N.J.S.A. 34:15-49, the Superior Court of New Jersey, Law Division, was without jurisdiction over claims for Workers' Compensation benefits. Judge Bernhard further ordered that Petitioner's fraud claim be dismissed with prejudice because Petitioner failed to adequately establish that he

reasonably relied upon the representation of the Association or agents thereof to his detriment and because Petitioner's fraud claim is time-barred under N.J.S.A. 2A:14-1. Judge Bernhard finally ruled that the tolling provision which permits tolling of certain statutes of limitations where the claimant lacks the ability and capacity to pursue his or her lawful rights due to mental affliction was inapplicable with respect to Petitioner's fraud claim because Petitioner had not shown that he suffered from a psychological affliction when his cause of action for fraud arose, a requirement of that statute, and had not provided sufficient proof of his affliction. N.J.S.A. 2A:14-1. (RA11-13).

Accordingly, Judge Bernhard found that the Petitioner, without legally actionable excuse, failed to bring a timely Workers' Compensation claim and failed to bring a timely fraud claim. The Appellate Division, affirmed the decision of Judge Bernhard for substantially the same reasons. (RA2).

Subsequently, Petitioner couched the same arguments raised below in Constitutional terms before the New Jersey Supreme Court in his Petitioner for Certification. There, he argued that the New Jersey Workers' Compensation Law, in allowing employers to commit fraud by delaying employee claims, violates the Fifth and Fourteenth Amendments of the Constitution. The New Jersey Supreme Court denied Mr. Langdale's Petition, with costs.

REASONS FOR DENYING THE WRIT

POINT I

THE PETITION CONTAINS A MISSTATEMENT OF LAW THAT, WHEN CORRECTED, ELIMINATES PETITIONER'S CONSTITUTIONAL CLAIM.

The arguments Petitioner raises before this Court have no merit and provide no basis for the granting of certiorari, pursuant to 28 U.S.C. § 1257. Petitioner challenges the application of the two year statute of limitations of the New Jersey Workers' Compensation Law on the grounds that it allows an employer to frustrate a worker's opportunity to receive benefits by delaying the filing of that worker's claim. See N.J.S.A. 34:15-51. As a result of this potential injustice, Petitioner asserts that the Workers' Compensation statute of limitations violates the Fourteenth Amendment of the Constitution of the United States. However, the Petitioner's constitutional challenge of the Workers' Compensation Law is based upon a misunderstanding of the operation of that law. Namely, Mr. Langdale construes the law to impose a duty on the employer of an injured worker to file that worker's petition for workers' compensation benefits. However, N.J.S.A. 34:15-51 clearly provides that the claimant (i.e. the worker) must file a petition with the Worker's Compensation Division in Trenton and such petition must be filed within two years of the date of the accident from which the claim arose.

Accordingly, Petitioner's writ should be denied because the Workers' Compensation Law does not by its language and application provide employers with the opportunity to perpetrate fraud upon their workers by failing to bring a workers' compensation claim on behalf

of a worker injured in a work-related accident. The statute instead places the onus on the worker to file the claim.

POINT II

THE CLAIM OF PETITIONER THAT JUDGE BERNHARD MADE AN EIGHT YEAR ERROR IN DETERMINING WHEN PETITIONER DISCOVERED THE ASSOCIATION'S ALLEGED FRAUD DOES NOT PROVIDE GROUNDS FOR THIS COURT TO GRANT CERTIORARI BECAUSE PETITIONER'S CLAIM RAISES NO CONSTITUTIONAL ISSUE AND IS MERITLESS.

Pursuant to 28 U.S.C.A. § 1257, the United States Supreme Court does not have jurisdiction over matters that were decided on adequate and independent state grounds. Michigan v. Tyler, 436 U.S. 499 (1978); Parker v. North Carolina, 397 U.S. 790 (1970). By alleging that Judge Bernhard committed an error of eight years in determining when the Petitioner discovered the Association's alleged fraud, Petitioner raises no federal or Constitutional question. Therefore, this Court has no jurisdiction to hear this allegation.

Moreover, the claims of Petitioner are groundless. In assessing when the statute of limitations on a fraud claim begins to run, the Court considers when the Petitioner discovered or should have discovered the alleged fraud. Dreier Co. v. Unitronix Corp., 527 A.2d 875, 883, 218 N.J. Super. 260, 274 (App. Div. 1986). ("In cases of fraud thi[s] period of limitation begins to run only from the discovery of the fraud or the time when, by reasonable diligence, it could have been discovered"). The Petitioner indicated in his discovery responses that he learned in 1979 that there was a two year statute of limitations and

that he recognized that the limitation period had run in 1981. In light of this information, Judge Bernhard found that the Petitioner was aware that a fraud was being perpetrated upon him in 1981. Accordingly, Judge Bernhard correctly found that the six year statute of limitations for fraud began to run in 1981 and that Mr. Langdale's 1990 action was therefore time-barred.

It should also be noted that the issue of the statute of limitations for Mr. Langdale's fraud claim need not be reached because Mr. Langdale failed to establish one of the basic elements of fraud. Namely, as Judge Bernhard correctly found, Mr. Langdale did not establish that he relied on the alleged misrepresentations of the agents of the Association and its insurance company. In support of his finding, Judge Bernhard noted on the record:

> Moreover, in response to defendant's interrogatory no. 26, which asks did you rely on any representation made to you by any agent of the defendant, as identified in a prior interrogatory, which is no. 25, the plaintiff answered, "as regards [the Association representative's] opinion that fault barred my claim, no." (RA11)

Therefore, by Langdale's own admission, no fraud was committed by the Association.

CONCLUSION

The Petition of John A. Langdale presents no question that this Court should address, no issue that is worthy of its attention. The Petition for certiorari should be denied.

Respectfully submitted,

Peter L. Korn
(Counsel of Record)

James R. Korn
Christopher K. Costa

McDonough, Korn & Eichhorn
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Community Care Association
of Hunterdon County

Dated: July 21, 1995

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SUPREME COURT OF NEW JERSEY
C-599 September Term 1994
38,972

JOHN A. LANGDALE,
Plaintiff-Petitioner,

v. ON PETITION FOR CERTIFICATION

HUNTERDON COUNTY
and COMMUNITY CARE
ASSOCIATION OF
HUNTERDON COUNTY,
Defendants-Respondents. Filed Feb. 28, 1995

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5941-91 having been submitted to this Court, and the Court having considered the same;

IT IS ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Robert N. Wilenz, Chief Justice, at Trenton, this 27th day of February, 1995.

s/Stephen Townsend
CLERK OF THE SUPREME COURT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-5941-91T3

JOHN A. LANGDALE,
Plaintiff-Petitioner,

v.

HUNTERDON COUNTY
and COMMUNITY CARE
ASSOCIATION OF
HUNTERDON COUNTY,
Defendants-Respondents.

Filed May 26, 1994

s/R. Emile Cox
Clerk

Submitted: April 27, 1994 - Decided: May 26, 1994

Before Judges Havey and A.M. Stein

On appeal from the Superior Court of New Jersey, Law Division, Hunterdon County.

John A. Langdale, appellant pro se.

Gebhardt & Kiefer, attorneys for respondent Hunterdon County (Judith A. Kopen on the brief).

McDonough, Korn & Eichhorn, attorneys for respondent Community Care Association of Hunterdon County (James R. Korn, of counsel; Anthony Tracy on the brief).

PER CURIAM

The order of the Law Division entering summary judgment in favor of defendant Community Care Association of Hunterdon County dated May 15, 1992, is

affirmed substantially for the reasons set forth by Judge Bernhard in his oral opinion of May 1, 1992.

By prior order dated November 8, 1991, Judge Bernhard entered summary judgment in favor of defendant Hunterdon County because plaintiff was not a county employee. The basis for plaintiff's assertion that he was an employee of Hunterdon County at the time of the accident is because the 1990 Flemington telephone directory listed the Community Care Association of Hunterdon under the general Hunterdon County listings.

The judge's explanation for dismissing Hunterdon County is not available because the tape used to record the hearing could not be transcribed because it was blank.

Hunterdon County's moving papers included the certificate of incorporation of the Community Care Association of Hunterdon. Hunterdon County is not mentioned in the certificate of incorporation. Defendant also provided an uncontradicted affidavit of John W. Anaya who is the president of the Community Care Association of Hunterdon. In the affidavit, Anaya explained the origin of the Association.

In 1975, the Hunterdon County Board of Freeholders named a committee consisting of private citizens whose purpose was to study nursing home concepts. In February of 1976, the committee named itself the Community Care Association of Hunterdon. In November 1976, the Association incorporated as a non-profit corporation. Since its inception, the Association has been a private charity dedicated to serving the needs of the elderly in the county.

The Association is not associated with or a part of any governmental agency. Other than a telephone directory that lists the Community Care Association of Hunterdon under the general Hunterdon County listings, plaintiff has not provided any support for his contention that he was a Hunterdon County employee.

The judge's conclusion that plaintiff was not a Hunterdon County employee is supported by substantial credible evidence in the record. R. 2:11-3(e)(1)(A); Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). There was no real issue as to any material fact and defendant Hunterdon County was entitled to summary judgment. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954).

The other contentions raised by plaintiff are clearly without merit. R. 2:11-3(e)(1)(E).

Affirmed.

s/R. Emile Cox
Clerk

JOHN LANGDALE,	:	SUPERIOR COURT OF
Plaintiff,	:	NEW JERSEY
	:	LAW DIVISION
vs.	:	HUNTERDON COUNTY
	:	DOCKET NO. HNT L 272 90
COMMUNITY CARE	:	CIVIL ACTION
ASSOCIATION OF	:	ORDER GRANTING SUM-
HUNTERDON,	:	MARY JUDGMENT TO
Defendant.	:	DEFENDANT, COMMUNITY
	:	CARE ASSOCIATION OF
	:	HUNTERDON COUNTY

JUDGE: Honorable Edmund R. Bernhard, J.S.C.
DATE OF MOTION: Friday, May 1, 1992 at 9:00 a.m.
PARTIES PRESENT OR REPRESENTED: John A. Langdale, appearing pro se, and Anthony M. Tracy, Esq., appearing on behalf of defendant, Community Care Association of Hunterdon County.

ORDERED:

1. That the various submissions of the plaintiff setting forth his account of the facts underlying this matter are hereby recognized as certifications in opposition to the defendant's motion for summary judgment.

2. That summary judgment is hereby granted in favor of defendant, Community Care Association of Hunterdon County, dismissing with prejudice the plaintiff's claim for worker's compensation as this claim is time-barred under N.J.S.A. 34:15-51 and because, pursuant to N.J.S.A. 34:15-49, the Superior Court of New Jersey, Law Division, is without jurisdiction over claims for workers' compensation benefits.

3. That summary judgment is hereby granted in favor of defendant Community Care Association of Hunterdon County, dismissing with prejudice the plaintiff's claim for fraud as the plaintiff has failed to adequately establish that he reasonably relied upon a false representation made by the defendant or agents thereof to his detriment and because such a claim is time-barred under N.J.S.A. 2A:14-1.

4. That the tolling provision of N.J.S.A. 2A:14-21, which permits tolling of certain statutes of limitations where the claimant lacks the ability and capacity, due to mental affliction, to pursue his lawful rights, is inapplicable with respect to the plaintiff's fraud claim as the plaintiff has not shown that he suffered from any psychological afflictions when his cause of action for fraud arose.

5. A copy of this Order shall be served upon John A. Langdale within 7 days of the date of this Order.

DATE OF ORDER: May 15, 1992

s/Edmund R. Bernhard, J.S.C.

OPPOSED_____ Reasons set forth on the record at
UNOPPOSED_____ the time the motion was argued

SUPERIOR COURT OF NEW JERSEY,
LAW DIVISION, HUNTERDON COUNTY
DOCKET NO. L272-90

JOHN A. LANGDALE,
Plaintiff,
v.

HUNTERDON COUNTY, ET AL.S.,
Defendants.

PLACE: Hunterdon County Court House
71 Main Street
Flemington, New Jersey 08822

DATE: May 1, 1992

BEFORE:

HON. EDMUND R. BERNHARD, J.S.C.

TRANSCRIPT ORDERED BY:

JOHN LANGDALE, PLAINTIFF/PRO SE

APPEARANCES:

JOHN LANGDALE, PLAINTIFF/PRO SE

ANTHONY TRACY, ESQ.
On Behalf of Defendant Community Care Association
of Hunterdon County

TRANSCRIPT OF MOTION HEARING, OPINION
[Argument Excluded]

All right. This is Defendant, Community Care Association of Hunterdon County's motion for summary judgment. This action was commenced when the Plaintiff, John Langdale filed a complaint on June 28, 1990, of [sic] the Defendant, Community Care Association was named as a defendant in an amended complaint, I believe filed on October 21, 1991, and remains as the only defendant in this action.

On October 4, 1977, plaintiff was involved in an automobile accident while engaged in the course of his employment with the Community Care Association of Hunterdon County. Plaintiff's central claim is for damages arising out of the on-the-job injuries or the injuries he sustained in that automobile action.

He claims that he is entitled to worker's compensation benefits and also has asserted a claim of fraud. He claims and argues here that he was intentionally defrauded out of his worker's compensation benefits by representatives of the Hunterdon County. Specifically as I understand, the only one named is Mr. Richard O'Brien. He has discussed the relationship both in his documents and here at oral argument with the agent as well as some discussions with the company.

The plaintiff alleges in his amended complaint that he failed to file a timely claim with the Division of Workmen's Compensation, because agents of the Association, that is the defendant Association, willfully and with premeditation, engaged him in protracted tactics of delay and actively concealed a statute of limitations from him.

Defendant argues that plaintiff's complaint should be dismissed as his claim for Worker's Compensation benefits is time barred under N.J.S.A. 34:15-51 which states that: "Every claimant for compensation under Article 2 of this chapter (Section 34:125-7, et seq.,) shall, unless a settlement is effected or a petition filed under the provisions of 34:15-50 of this title, file a petition in duplicate with the Division in Trenton within two years after the date on which the accident occur.

The plaintiff, in response, argues that due to his severe mental problems that occurred or injuries which occurred, the two year statute of limitation should be tolled, that's what has been argued in his papers.

Additionally, he argues that he met the conditions of N.J.S.A. 34:15-51, with regard to an interview with Mr. Charles Supko, which he has attached as an exhibit entitled, confirmation of an interview and submits that this clearly indicates his attempt to file a claim petition within a two year period.

In regard to the plaintiff's claim that he is entitled to worker's compensation benefit, the Court directs the parties attention to N.J.S.A. 34:15-49 which states: "The Division of Worker's Compensation shall have exclusive original jurisdiction of all claims for worker's compensation benefits under the statute, and additionally provides that any appeal from the Division of Worker's Compensation goes directly to the Appellate Division of the Superior Court.

Based on the foregoing, this court does not have jurisdiction to decide any claim for worker's compensation benefits albeit those leading to a lifting of the bar, or two year period described in the statute. Therefore, the

portion of plaintiff's complaint seeking workmen's compensation benefits must be dismissed and summary judgment is granted as to that aspect.

As t[o] the fraud allegations, the plaintiff asserts that Richard O'Brien, a former officer of the Community Care Association, intentionally misrepresented to the plaintiff in early 1979 that he was not entitled to worker's compensation benefits because the accident was his fault. That is Mr. Langdale's fault. The accident again, or the injury again, came about from an automobile accident which Mr. Langdale submitted a copy of the police report to me in one of his submissions.

The defendants argue that the plaintiff has not met the requisite elements of fraud, a fraud claim and the plaintiff's action for fraud is, likewise, time barred, under N.J.S.A. 2A:14-1, the applicable period of limitations, I believe, is six years.

It is well settled that the necessary elements of a fraud action, or the defendants false representation, the knowledge of its falsity, the intention that plaintiff rely on it, that plaintiff, in fact, reasonably did rely and the plaintiff's consequent injuries.

They are the elements of fraud set forth in two leading cases, Sussex Jewish Center versus Whale, 86 N.J. 619 (1981) and Chabar versus Sanyo Business Systems, 218 N.J. Super. 111, p. 117 (App. Div. 1987).

A review of the plaintiff's complaint, as well as the certifications or his submissions and plaintiff's interrogatory answers reveal that the plaintiff, in fact, did not rely on any misrepresentations or any representations that Mr. O'Brien made. After Mr. O'Brien made the alleged

misrepresentation in early 1979, the plaintiff continued in his efforts to obtain worker's compensation benefits.

In 1979, the plaintiff in his submission indicates that he had numerous contacts with an insurance agency from whom the Association purportedly obtained workers compensation policy and has indicated that after a number of communications, the agency for lack of a better term, disappeared and was unable to make phone contact.

Mr. O'Brien, with regard to his communications with the plaintiff may not have been helpful and may have, in fact, given faulty or erroneous advice with regard to the applicability of workmen's compensation benefits, but there is nothing to suggest that Mr. O'Brien's misrepresentations, albeit, whether they were innocent or on purpose, were relied on.

Moreover, in response to defendant's interrogatory number 26, which asks, did you rely on any representation made to you by any agent of the defendant, as identified in a prior interrogatory, which is number 25, the plaintiff answered, "As regards O'Brien's opinion that fault barred my claim, no."

Additionally there is nothing in the record before me that would indicated that the alleged fraud was the cause of the plaintiff's consequent damages, whatever damages he may have sustained by way of an injury which led to various problems he had came about as a result of the automobile accident that occurred in October of 1979.

In any event, I find that the complaint and the submissions fail to set forth the necessary elements of fraud.

In addition, the plaintiff asserts that his mental condition tolled the statute of limitations which are found in N.J.S.A. 2A:14-21. The parties agree that the tolling provision of N.J.S.A. 2A:14-21 are applicable to the six year statute of limitation for fraud. However, there are problems with tolling this particular period of limitation, specifically, the Supreme Court in Kyle versus Green Acres at Verona, Inc., 444 N.J. 100 (1965), foreclosed the tolling of the running of the limitations unless the plaintiff and using the words of the statute and the words of the Court was, insane, which means a mental disability at the time the cause of action occurred. However, they did carve out an exception which is one of equity, which I find it difficult to apply in this particular case.

Plaintiff, in support of his position that he suffered from what has been described, defined in the Kyle case, as a condition of mental derangement that prevented the sufferer from understanding his legal rights or instituting action, has provided various certifications, one of which came from his mother, who described his physical condition and what she observed at the time. I believe she was teaching in a foreign country and visited on various occasions and described various letters received from the plaintiff and what those letters indicated to her.

The defendant also attached various reports or documentation from the Department of Human Services from Miami and Washington, D.C. These reports were dated September 7, 1990 and September 22nd or 28th, 1989 and November 3, 1988. The fourth report, the date is illegible.

These reports, at that particular period of time, indicate that plaintiff had an incapacitating illness, whatever that may very well mean. And, I mean no disrespect to any

medical condition that Mr. Langdale suffered. But that particular definition does not mean any of the case law criteria for tolling a statute of limitations.

There are no expert reports or certifications that would suggest the plaintiff met the necessary disability provisions that would toll the statute of limitations if, in fact, either the tolling provision was applicable or it should have been lifted.

In other words, there is no competent evidence in the record upon which this court can rely, even if appropriate, to lift the bar of the statute of limitations.

Plaintiff indicates that he recognized there was a fraud being perpetrated upon him in 1981. He indicated that he learned in '79 that there was a two year statute of limitations and recognized the problem in 1981. I would regard that as the period of time when the fraud cause of action would have occurred. Obviously, this claim would have been barred in 1987, and in any event, by June 28th, 1990 when the complaint was filed, or 1991, when the amended complaint was filed.

Therefore, I find that one, there are not sufficient elements set forth in the complaint, nor do the submissions make out a cause of action based upon fraud and the statute of limitations is not tolled, therefore, summary judgment wise, on the fraud claim as well.